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President: Mr. Razali Ismail ..... (Malaysia)

The meeting was called to order at 10.10 a.m.

Tribute to the memory of Mr. Ahmed Zaki, Permanent Representative of Maldives to the United Nations

Tribute to the memory of Mr. Paul John Firmino Lusaka, former President of the General Assembly

The President: This morning, before we take up the items on our agenda, the General Assembly will pay tribute first to the memory of Mr. Ahmed Zaki, who served as Permanent Representative of Maldives to the United Nations from 1979 to 1983 and from 1994 until the time of his death on 15 November 1996.

Ambassador Zaki had a distinguished career as a respected civil servant and an esteemed diplomat. He was Prime Minister of his country from 1979 to 1983, in addition to holding a number of ministerial posts. He will be remembered for the devotion with which he served his country and the cause of the United Nations.

On behalf of the General Assembly, I request the representative of Maldives to convey our heartfelt condolences to the Government of Maldives and to the bereaved family of Ambassador Zaki.

The General Assembly will also pay tribute to the memory of Mr. Paul John Firmino Lusaka, President of the General Assembly at its thirty-ninth session.

Mr. Lusaka, a distinguished diplomat, had a long and outstanding association with the United Nations. As the chief representative of his country, Zambia, to the United Nations during the 1970s and 1980s, Mr. Lusaka, as President of the Security Council, the Economic and Social Council and the United Nations Council for Namibia played a prominent role in the Organization and made major contributions towards the achievement of the objectives set out in the Charter of the United Nations.

On behalf of the General Assembly, I should like to convey our profound condolences to the Zambian delegation and to ask the delegation to convey our sympathy to the bereaved family of Mr. Lusaka.

I now invite members of the Assembly to stand and observe a minute of silence in tribute to the memory of the late Permanent Representative of Maldives to the United Nations, Mr. Ahmed Zaki, and of the late former President of the General Assembly, Mr. Paul Lusaka.

The members of the General Assembly observed a minute of silence.

The President: I now call on the Secretary-General.

The Secretary-General: I was deeply saddened to learn of the deaths of Ahmed Zaki, Permanent Representative of the Republic of Maldives to the United Nations, and of Paul Lusaka, former President of the General Assembly.

96-86846 (E)

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Ambassador Zaki gave a lifetime of public service to his country as Prime Minister of the Maldives from 1972 to 1975, Attorney General from 1983 to 1990 and Speaker of the Maldives Parliament from 1990 to 1993. Mr. Zaki was a leading spokesman for the rights and interests of small States and small islands. His domestic civil service and political career spanned more than 40 years.

Mr. Zaki was appointed Permanent Representative of the Maldives to the United Nations in 1994, having also served in that capacity from 1979 to 1983. His death after a long illness is a great loss to the Maldives and to the entire international community.

Mr. Paul Lusaka devoted his life to domestic and international public service. He was a man of great vision and honour, whose dedication and commitment to the cause of peace and development in Africa was an inspiration to all of us.

As President of the United Nations Council for Namibia from 1979 to 1986, Mr. Lusaka worked hard to ensure that the cause of Namibian independence remained at the top of the international agenda.

Paul Lusaka's diplomatic career spanned more than two and a half decades. He served Zambia with distinction as its Permanent Representative to the United Nations on two occasions, in 1972 and 1973 and from 1979 to 1986. He was universally respected and admired by those who worked with him. He was a close and dear friend.

As President of the Security Council in 1979, of the Economic and Social Council in 1981 and as President of the General Assembly in 1984-1985, Paul Lusaka made an immense contribution to the work of the United Nations. His death has robbed the world of a great ambassador for the United Nations ideals of peace, democracy and international understanding.

In his opening address to the thirty-ninth session of the General Assembly, Mr. Lusaka emphasized that the United Nations needed a rebirth and a renaissance. He added:

> "We have the instrumentality, so we must have the will. We have the dangers, so we must have the courage to overcome them. We have the Charter, so we must have the capacity to implement it." *(Official Records of the General Assembly, Thirty-ninth Session, Plenary Meetings, 1st meeting, para. 98)*

These words are no less relevant today. Mr. Lusaka will be missed by the entire United Nations family.

The President: I now call on the representative of Cameroon, who will speak on behalf of the Group of African States.

Mr. Mpay (Cameroon) *(interpretation from French)*: It is with deep emotion and sadness that the African Group, on whose behalf I speak, has learned of the death on 9 November 1996 in Washington of Mr. Paul Lusaka, who, during his tenure as Permanent Representative and Ambassador of Zambia to the United Nations, assumed the very important functions of President of the General Assembly, of the Security Council, of the Economic and Social Council and, in particular, of the United Nations Council for Nambia.

It is with the same emotions and sadness that the African Group has learned of the death, on 15 November 1996 at Mount Elizabeth Hospital in Singapore, of Mr. Ahmed Zaki, Ambassador and Permanent Representative of the Maldives to the United Nations.

Ambassador Lusaka, to whose memory we pay tribute, was a great champion of the African cause and worked ardently to free Africa, particularly Namibia. His tireless efforts during this period contributed not only to Nambia's accession to international sovereignty but also to Africa's complete liberation from the yoke of colonialism and from apartheid. His death deprives Africa of one of its great sons, who was so dearly cherished and beloved. We will always remember him as a great visionary who loved his country, Africa and the entire world. The African Group conveys its deepest condolences to the Government and people of Zambia as well as to his family, to whom we express our most heartfelt compassion.

Ambassador Ahmed Zaki was still among us not too long ago, and together, we were like a family. He was a political man, a magistrate and a skilled diplomat who was conspicuous by his love for his brethren, his kindness and his generosity. He always worked tirelessly to alleviate human suffering and to bring people together. With his death we lose a guide, a counsellor, a friend, and a visionary for universal causes.

The African Group conveys to the Government and people of the Maldives and to the bereaved family its deepest condolences and sympathy.

The President: I call on the representative of Lebanon, who will speak on behalf of the Group of Asian States.

Mr. Moubarak (Lebanon): On behalf of the Asian Group of States Members of the United Nations, I wish to pay tribute to the memory of two distinguished and prominent figures in the diplomatic world, whom we lost recently: Mr. Paul John Firmino Lusaka, former Permanent Representative of Zambia to the United Nations, who served as President of the thirty-ninth session of the General Assembly; and Mr. Ahmed Zaki, former Permanent Representative of the Republic of Maldives to the United Nations.

Both Mr. Lusaka and Ambassador Zaki played important roles in their countries and at the United Nations. Mr. Lusaka served as a Member of Parliament in Zambia from 1973 to 1978. He was appointed a Member of the Cabinet and served during different periods as Minister of Rural Development, Minister of Power, Transport and Communication, and Minister of Health. He also acted as Minister of Finance, Foreign Affairs, Commerce and Foreign Trade, Lands and Natural Resources, Legal Affairs and Works. He served as Ambassador Extraordinary and Plenipotentiary of his country to the United States and also as Permanent Representative of Zambia to the United Nations for four years. In that capacity he presided over the United Nations Council for Namibia, the Security Council, the Economic and Social Council and the thirty-ninth session of the General Assembly. He also served as a member of the Board of Trustees of the United Nations Institute for Training and Research (UNITAR), to mention but a few of the many activities through which he sought to make a substantive contribution, which will always be remembered and appreciated.

Ambassador Zaki served as Prime Minister of the Republic of Maldives, Minister of Trade and Food, Minister of Justice and Minister of External Affairs. He served as Speaker of the Parliament and also as Attorney General. His untimely passing has deprived us of a friend and of a dear and highly esteemed colleague in the United Nations community, and his country of a very capable diplomat.

In our working environment, which is quite often hampered by diplomatic trimmings that often tend to blur the essence of our work, Ambassador Zaki's calm and resolute approach to all tasks he undertook acted as a a catalytic force around which consensus would develop and progress in our common endeavours would be achieved. His dedication to his work at the United Nations will always be remembered and very much appreciated.

In making these brief remarks about Ambassador Zaki, I would be remiss if I did not mention the many qualities that so endeared him to all who were like me, fortunate enough to know and associate with him. Mr. Lusaka's and Ambassador Zaki's long careers were landmarks in dedication.

On behalf of the Asian Group, I should like to express my deepest sympathy to the family and friends of Mr. Paul Lusaka and of Ambassador Ahmed Zaki and my sincere condolences to the Governments, peoples and Permanent Missions of Zambia and the Maldives.

The President: I now call on the Representative of The former Yugoslav Republic of Macedonia, who will speak on behalf of the Group of Eastern European States.

Mr. Maleski (Former Yugoslav Republic of Macedonia): On behalf of the States of the Eastern European Group, allow me to express our deepest condolences to the people and the Government of Zambia on the death of Mr. Paul Lusaka, President of the thirty-ninth session of the General Assembly.

It was also with great sadness that we heard the news of the passing of our colleague, the Permanent Representative of the Republic of Maldives, Ambassador Ahmed Zaki. We convey our deepest condolences to the family of the late Ambassador and to the Government of the Maldives.

The President: I now call on the representative of Jamaica, who will speak on behalf of the Latin American and Caribbean Group.

Miss Durrant (Jamaica): On behalf of the member States of the Latin American and Caribbean Group; I wish to pay tribute to the life and work of two distinguished diplomats, Mr. Paul Lusaka, former Permanent Representative of Zambia, and the late Ambassador Mr. Ahmed Zaki of the Maldives.

Ambassador Lusaka was a distinguished diplomat and public servant. He made a tremendous contribution to his country and his region in the many capacities in which he was called upon by his nation and the international community to serve. He committed his life to public service, first as a teacher and then as a civil servant, a diplomat and a Minister of Government. He

was part of that generation of diplomats who had to guide their countries on the international stage immediately after independence. His quick rise through the ranks of the foreign service of his young nation was a tribute to his skills and his commitment to service.

The United Nations system benefited from his skills and experience as his country's Permanent Representative to the United Nations on two occasions and as President of the General Assembly at its thirty-ninth session, President of the Security Council, President of the Economic and Social Council and President of the United Nations Council for Namibia. Ambassador Lusaka held other important positions in the bureaux of the Organization. He will be remembered for his keen intelligence, wit and persuasiveness and for the easy manner in which he was able to relate to representatives from all parts of the world. His skill in dealing with a wide range of economic and political issues was legendary.

The United Nations system has certainly been enriched by his contribution and we pay tribute to the Government and people of Zambia and the family of this outstanding public servant and diplomat for his many contributions to the Organization and the global community.

Our delegations also pay tribute to Ambassador Lusaka for his contribution to the strengthening of relations between his country, and a number of our Member States, including my own country, to which he was accredited as High Commissioner and Ambassador.

On behalf of the member States of the Latin American and Caribbean Group, I extend sincere condolences to the family of Ambassador Lusaka and to the Government and people of Zambia. We do so with a sense of gratitude for the contribution he made to the United Nations system and to the international community as a whole.

A distinguished and dedicated public servant, Ambassador Ahmed Zaki of the Maldives served his nation within many sectors of public life. As holder of several ministerial portfolios, he had the honour to serve as Prime Minister of the Maldives and as Speaker of the Maldives Parliament.

The United Nations benefited from his skills and experience during his tenure as Permanent Representative, first from 1979 to 1983 and again from 1994 to 1996. As a representative of an archipelagic and atoll State, Ambassador Zaki took a keen interest in issues affecting small island developing States. We benefited from his continuous emphasis on the need for the international community to understand both the fragility of these States and the threat to their survival posed by environmental damage. Indeed, he was one of the people who have ensured that the Maldives took a leading role on the issues of climate change and global warming.

The member States of the Latin American and Caribbean Group join with the delegation of the Maldives in mourning the loss of our colleague and pay tribute to his life and work, which have helped to enrich this Organization and the nation he served for most of his life.

The President: I now call on the representative of Belgium, who will speak on behalf of the Group of Western European and other States.

Mr. Reyn (Belgium) (*interpretation from French*): It was with sadness that we learned of the death of Ambassador Ahmed Zaki, the Permanent Representative of Maldives. He held many important political functions, including Prime Minister in several of his country's Governments. He had a distinguished career in multilateral diplomacy and in Brussels with the European Communities, but particularly in the United Nations, where his second mandate began in 1994 and where his work was appreciated by all.

On behalf of the Group of Western European and other States, I would take this opportunity to send our most sincere condolences to the delegation of the Maldives, its Government and particularly to the family of Ambassador Zaki.

On behalf of the members of the Group of Western European and other States, I would also like to associate myself with the most sincere condolences that have been expressed on the passing away of a great diplomat, Ambassador Paul Lusaka. We will remember him as an eminent President of the General Assembly and particularly as a President of the United Nations Council for Namibia. With his passing, the United Nations has lost a great statesman and a great friend.

The President: I now call on the representative of the United States of America on behalf of the host country.

Mr. Marrero (United States of America): On behalf of the United States, as host country, I would like to express my Government's deep regret at the tragic loss to Maldives and to Zambia, to the United Nations and to the

world of two esteemed colleagues and close friends: the Permanent Representative of Maldives, Ambassador Ahmed Zaki, and Zambia's former Ambassador to the United States and to the United Nations, Mr. Paul Lusaka.

I am sure that the international community will miss their positive and pragmatic voice in this Assembly and in the other forums in which they worked. Both Ambassador Zaki and Ambassador Lusaka stood for the highest ideals of their chosen profession and we offer our condolences to the Governments and the peoples of the Republic of Maldives and of Zambia on their passing.

We pay special tribute to their steady commitment to the ideals of peace and non-violence. Both Ambassador Zaki and Ambassador Lusaka's service to Maldives and to Zambia, to the international community and to their people extended many years and is an extraordinary testament to their probity, discretion and dedication.

Finally, I would like to extend a personal expression of sympathy to the families of Ambassadors Zaki and Lusaka. The world shares their sorrow and we ask God to grant them solace, faith and strength at such a difficult moment.

The President: I call on the representative of Maldives.

Mr. Didi (Maldives): This morning, I am speaking in order to perform a very sad duty. I stand before the Assembly to respond to the moving tribute and the kind words of sympathy that you, Mr. President, the Secretary-General and other members of the Assembly have extended on the occasion of the passing away of our Permanent Representative to the United Nations, His Excellency Mr. Ahmed Zaki.

On behalf of the Government of Maldives and the members of my country's delegation to the fifty-first session of the General Assembly, on behalf of Ambassador Zaki's bereaved family and on my own behalf, I wish to express the most sincere gratitude for these touching expressions of sympathy in this hour of grief to all of us.

Ambassador Zaki was not only a seasoned diplomat, he was a veteran politician, too. Besides being Prime Minister of Maldives from mid-1972 to early 1975, he had also held many other important posts during his four decades of selfless service to the country and the Government. Prominent among them were the posts of Attorney General and Minister of External Affairs. He had also been Speaker of the Citizens' *Majlis* — our Parliament — on three different occasions. In addition to being Permanent Representative of Maldives to the United Nations, Ambassador Zaki was also the High Commissioner of Maldives to the United Kingdom at the time of his death.

As a person, he was very dedicated to his family and was a dear friend to all who knew him well, both at home and abroad. With his untimely demise, Maldives has lost an able statesman and a true son of the country, who will be hard to replace.

In closing, I wish to assure you, Mr. President, that I shall convey the sentiments that you and the other speakers have expressed to my Government, to Mrs. Zaki and to the other members of our late Permanent Representative's family, on whose behalf I thank you once again.

Finally, I should like to associate myself with the words of sympathy that you, Sir, the Secretary-General and other speakers extended on the passing away of Mr. Paul Lusaka, President of the thirty-ninth session of the General Assembly and former Permanent Representative of Zambia to the United Nations. On behalf of the Maldivian delegation to the current session of the General Assembly and on my own behalf, I should like to convey our sincere condolences to the Government of Zambia and to the family of Ambassador Paul Lusaka.

The President: I now call on the representative of Zambia.

Mr. Kasanda (Zambia): I should like to thank the President of the General Assembly for organizing this moment this morning, enabling members of the Assembly to remember and to pay tribute to Ambassador Paul Lusaka, who peacefully passed away on 9 November 1996, in Washington, D.C., after a long illness.

Ambassador Lusaka was born in Zambia in January 1935. He received his basic education in his native country, Zambia. He proceeded to the University of Lesotho, where he obtained an M.A. degree. Later on he moved on to the University of Minnesota and after that received an honorary Doctor of Laws degree from McGill University in Canada.

Paul Lusaka served in Zambia with distinction and courage, having been appointed to several Cabinet ministerial posts: Minister of Rural Development,

Minister of Transport and Communications, and Minister of Health. During that period he earned the respect of his Cabinet colleagues for his integrity and honesty.

Paul Lusaka served the United Nations in several capacities, including as Ambassador of his country. From January 1979 to December 1980, he was the chief Zambian delegate to the Security Council. In 1981, he served as President of the Economic and Social Council. In September 1984, Paul Lusaka was elected President of the thirty-ninth session of the General Assembly. This was a great honour accorded to him, as an individual and as a representative of his country, Zambia. From 1979 to 1986, Ambassador Lusaka had the privilege of serving as President of the United Nations Council for Namibia. In each of these capacities, Paul Lusaka served the Organization with commitment, courage and distinction.

Paul Lusaka's life was one of service to his fellow human beings. He employed his diplomatic skills to the improvement of people's condition. As chief spokesman, Paul Lusaka articulated and reinforced the efforts of all his colleagues on the Council in building an international consensus on the right of Namibia to freedom and independence. He also participated in the Commonwealth group that witnessed the historical elections that ushered in a free South Africa.

My delegation is greatly touched by the various tributes expressed this morning, and we undertake to convey to the Zambian Government and to the bereaved family the various kind words of comfort that were expressed this morning.

We are also grateful for the honour bestowed on Paul Lusaka through this ceremony of remembrance for the humble contribution that he made in the service of the United Nations.

I should also like on this occasion to associate the Zambian delegation with the many tributes that have been paid to the delegation of Maldives on the loss of Ambassador Zaki. He was a valuable asset to his country, having served as Prime Minister and as minister with various portfolios.

Agenda item 50

Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Note by the Secretary-General transmitting the third annual report of the International Tribunal (A/51/292)

The President: May I take it that the Assembly takes note of the third annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991?

It was so decided.

The President: I call on Mr. Antonio Cassese, President of the International Tribunal.

Mr. Cassese (President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991): Let me first of all express my deep gratitude for the signal honour the General Assembly has shown me in once again inviting me to address the Assembly on the activities of the International Criminal Tribunal for the former Yugoslavia over the past 12 months.

May I take this opportunity also to express my deep gratitude and that of all the judges at The Hague to the Secretary-General, Mr. Boutros Boutros-Ghali, a statesman of great vision and deep moral commitment, who significantly contributed to the establishment of our Tribunal and has supported it consistently and unreservedly.

As members know, The Hague Tribunal has now been in existence for three years. In this third year, much headway has been made. When I last addressed the General Assembly, on 7 November 1995, the war in the former Yugoslavia had just stopped raging and the Tribunal's work was still affected in practical terms by the consequences of the conflict. We had only one of the then 43 indictees in our Detention Unit at The Hague, and no trial had commenced. In the subsequent period, a real breakthrough has occurred. Armed conflict has ceased and violence has been muted, if not in the minds of the contending parties then at least in the streets, towns and villages of the former Yugoslavia. The cessation of hostilities on the ground and the engagements undertaken by the parties to the Dayton Agreement have had a beneficial knock-on effect on the activities of our Tribunal. We now have seven persons in our Detention

Unit at The Hague and, what is even more important, we have been able to commence our judicial activities proper.

The first trial, the Tadic case, is about to finish and in another case, where the accused has pleaded guilty, sentencing proceedings are being held today and tomorrow at The Hague, and a sentence will be delivered in a few weeks. Two trials will be initiated in the next few months, one against one accused, the other against four accused. In other words, criminal proceedings against all seven persons in prison have either commenced or have already been held.

Thus, at long last, international criminal justice is being dispensed. For the first time since Nuremberg and Tokyo, individuals have been subjected to the impartial scrutiny of international justice on charges of the most serious crimes known to mankind. International accountability of individuals for breaching the tenets of international law has become a living reality. We envisage and are working towards more trials commencing next year if cooperation from States is forthcoming.

At the same time, the Tribunal, faced with the non-execution of most arrest warrants, has shown its resolve not to be thwarted by the inaction of States or by the attempts of individuals to evade international justice. The Tribunal has thus had to resort on five occasions to the special procedure contemplated in rule 61 of the Tribunal's Rules of Procedure and Evidence. In these five cases, the evidence gathered by the Prosecutor has been made public in open court, the indictments have been confirmed by a Trial Chamber and international arrest warrants have been issued via Interpol. In addition, the Tribunal's President, at the Trial Chambers' request, has brought to the attention of the Security Council the failure of some States or Entities of the former Yugoslavia to execute arrest warrants in these cases, thereby breaching their international legal obligation to cooperate with the Tribunal.

In spite of the progress made, one should not be blind to one major and almost insurmountable difficulty the Tribunal faces almost every day. This is the persistent lack of real cooperation by some States and Entities of the former Yugoslavia: most of them fail to obey the injunctions of the Tribunal to arrest indictees on their territory. This accounts for the huge gap between the number of indictees — 74 — and the number of accused detained in our prison at The Hague — seven.

In my two previous addresses to the General Assembly, in 1994 and 1995, I emphasized that the Tribunal lacks any enforcement agency of its own. Therefore, its orders can be executed only if the States and Entities concerned are willing to do so. Time and again, I have appealed strongly to all States, and more particularly to those of the former Yugoslavia, to put in place all the measures necessary to enable the Tribunal to fulfil its mission. The Dayton Agreement restated, strengthened and spelled out the already existing obligation of States to cooperate with our Tribunal. In addition, it extended that obligation to the two Entities composing Bosnia and Herzegovina, namely the Federation of Bosnia and Herzegovina and Republika Srpska. However, as far as the Tribunal is concerned, since its signing in Paris nearly a year ago, on 14 December 1995, most of the Agreement's promises have remained a dead letter. Some parties to the Agreement have simply failed to implement it in a crucial area: the apprehension of persons indicted by the Tribunal and their surrender to The Hague.

This applies, in particular to Serbia and Montenegro and to Republika Srpska. They have refused so far to arrest any indictee on their territory on the pretext that the arrest and surrender of indictees having their nationality would be contrary to their constitutions, which prohibit the extradition of their nationals to other States. In this regard, I would like to say most emphatically that this argument is utterly fallacious. First, the surrender of indictees to the Tribunal, an international judicial body established by the Security Council under Chapter VII of the Charter of the United Nations, has nothing to do with the extradition of nationals to other States.

Secondly, there exists in any case a universally accepted principle of international law whereby States cannot claim that their national legislation, including their constitution, prevents them from complying with international legal obligations. Were States to be allowed to depart from this fundamental principle of international law, total anarchy would ensue, because quite a few States would try to hide behind their national legislation to evade international legal obligations.

Other States and entities of the former Yugoslavia have instead passed legislation implementing the Tribunal's statute and permitting the arrest and delivery of indictees, including their own nationals. This holds true for Bosnia and Herzegovina and for Croatia. The attitude of Bosnia and Herzegovina is cooperative. Notably, the Sarajevo authorities have arrested and delivered the only two indictees on their territory. It is to be hoped that this attitude will survive the transition to common institutions under the Dayton peace agreement. It is a matter of regret

that the Federation of Bosnia and Herzegovina has so far failed to execute our arrest warrants. Similarly, it must be regretted that Croatia has failed both to exercise its indisputable influence and authority over Bosnian Croats to apprehend and deliver them to the Tribunal and to execute arrest warrants in Croatia itself, notably in the case of two leading figures, Ivica Rajic and Dario Kordic.

Clearly, if this lack of cooperation were to continue, the very credibility of international institutions would be at stake. Why create a new international body, endowed with the exalted aim of rendering justice, and then withhold the means necessary for it to fulfil its mission? Unlike Nuremberg, the present Tribunal was not established to do victors' justice, but to dispense victims' justice. How shall we heed the demands for justice of the victims and their relatives if we are not enabled fully to discharge the judicial mission vested in us? I therefore ask the Permanent Representatives of Serbia and Montenegro and of Croatia whether their Governments intend to cooperate with the Tribunal. If they do, let them demonstrate their good faith by arresting and delivering those indictees who are on their territory.

In the next few months, I propose to report, in a formal meeting to the Tribunal's parent organ, the Security Council, on the current complex problems besetting our work at The Hague. I trust that many States Members of the United Nations will participate in such a future debate.

I will now mention three major criticisms which have been made of our Tribunal and endeavour to respond to them. The Hague Tribunal has sometimes been accused of being biased. In particular, some States have argued that we show prejudice against the Serbs. In this regard, I would like to make two points. First, much of the Tribunal's investigations so far into crimes in which Serbs are the victims have been substantially hampered by the very refusal of Pale and Belgrade to cooperate with our Tribunal.

My second point is more general and goes to the heart of the very nature of international criminal justice. The Tribunal tries individuals. It does not try peoples, nations or States, although, of course, its trials may involve factual determinations as to the behaviour of States or Governments. Individuals are prosecuted when the Prosecutor has evidence that they have committed crimes within the Tribunal's jurisdiction. Prosecuting individuals on this basis is by definition even-handed and non-discriminatory, because it does not involve an enquiry as to the religion, nationality or ethnicity of an accused person.

It is axiomatic that the Tribunal, a judicial organ, is absolutely impartial. The question bears asking: "What could the Tribunal possibly hope to gain by adopting a biased or partial approach?" We at The Hague are ever conscious in this respect of the words of the Chief United States Prosecutor, Justice Robert Jackson, at Nuremberg, when he said:

> "We must not forget that the record on which we judge the defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our lips as well".

These words are equally true of the International Criminal Tribunal for the former Yugoslavia.

I shall now move on to a second criticism levelled at the Tribunal by a number of non-governmental organizations and some segments of public opinion. They have assailed us for trying only the so-called "small fry", rather than the principal architects of the appalling atrocities in the former Yugoslavia. It is indeed true that the Tribunal's jurisdiction pre-eminently involves the prosecution of crimes that form part of a systematic policy, rather than isolated acts of individual viciousness. The Tribunal aims to reach those who orchestrated crimes committed on the ground — that is, military and political leaders. For this purpose, however, it may prove necessary to try both the subordinates and their superiors. When the trials of so-called "small fry" take place, therefore, they are designed not only to render justice for atrocious crimes allegedly committed by those persons, but also to produce evidence against the higher echelons of the military and political command structure.

A third criticism that has been levelled at the Tribunal is that its Rules of Procedure and Evidence have been overamended. Before I rebut this criticism, let me remind the Assembly that the passing of rules to govern the conduct of criminal proceedings is among those functions that are not normally exercised by judges. In all our national legal systems, the legislature enacts laws or codes on criminal procedure and the judges interpret and apply them. The judiciary is quite distinct from the legislative branch. However, the situation is quite different for us at the international level. The Security Council rightly entrusted the judges with this novel task, in an area where there were few or no precedents. Let me stress, however, that, whenever our Judges are called upon to fill in the gaps left by the statute, they do so within the limits set by the Security Council. No rule of

procedure, nor any amendment to such a rule, may infringe the principles laid down in the statute of our Tribunal.

Turning now to the specific criticism about overamending our rules, I should point out that it was essential, in the interests of justice, to amend the rules in the light of new problems that arose or unanticipated situations that occurred. Our Rules of Procedure have been amended for a variety of reasons: to enhance the rights of the accused; to help to better protect victims and witnesses; to take account of the views of the host country, the Netherlands; to improve the consistency, clarity and comprehensiveness of the rules; and for many other reasons. One might ask: Why were the rules not perfectly comprehensive, consistent and clear in the first place? To ask this question is to answer it. It would have been simply impossible for the first truly international criminal tribunal to have adopted the first ever international criminal procedural and evidentiary code from a first draft dealing perfectly with all the diverse issues with which the Tribunal has to cope: namely, all the stages of a criminal trial — investigations, indictment, pre-trial hearings, trial, appeal, review.

By way of conclusion, let me revert to a point I made earlier. Despite its indisputable and significant accomplishments, the Hague Tribunal is grappling every day with a huge problem: the lack of real cooperation by some States and entities of the former Yugoslavia. This is a massive stumbling block on our path towards justice. We at The Hague fervently hope that this attitude will be discontinued very soon.

It will be recalled that under Article 227 of the Treaty of Versailles the Emperor Wilhelm II of Germany was arraigned for

> "a supreme offence against international morality and the sanctity of treaties".

Yet, he was never tried. The message to the international community at that time was clear: individual leaders were immune from prosecution. In this climate, Hitler, if questioned as to whether he thought he could get away with his genocidal policies in Europe, could have said with confidence: "But who remembers the victims of so many crimes committed during the First World War?" Fortunately, the spark of Versailles was rekindled after the Second World War, when the major Axis war criminals were brought to justice at Nuremberg and impunity was checked.

Now, again, the supreme bodies of the United Nations have pledged to punish, at the international level, egregious offenders. And yet, that pledge, too, is currently in danger of being undermined by the persistent refusal of some States and entities to arrest and bring to justice those allegedly responsible for massive violations of international law.

Members of the General Assembly, I must ask you: Did you not pledge in 1993, on behalf of the innumerable victims of atrocities in the former Yugoslavia, that the culprits would be brought to book? I must ask you: Does the Tribunal still have your support to carry out this mission? Let us ensure today that no future leader can say with impunity: "But who remembers the war crimes and genocide perpetrated in the former Yugoslavia?"

At The Hague we are, of course, aware that the International Tribunal cannot escape the harsh realities of the present world community. In 1947, Henry Stimson, who had served as United States Secretary of State and Secretary of War, reflecting on Nuremberg, wrote:

> "International law is still limited by international politics, and we must not pretend that either can live and grow without the other".

To some extent these words hold true for our Tribunal as well. We are aware that we are different from domestic criminal courts, which may and indeed must be blind to any political reality, because the executive and legislative branches of government take care of political problems ancillary to the administration of justice. By contrast, the International Tribunal has no executive or legislative branch of government to turn to, and, in addition, it tries large-scale crimes such as genocide committed during prolonged internal and international armed conflicts. Consequently, the Hague Tribunal cannot ignore the general political context within which its action unfolds. We think, however, that international justice must not be conditioned by, let alone capitulate to, political exigencies. It is our pledge that we shall do whatever is legally permitted to international judges to ensure that the long-term demand for international justice of all States prevails over the short-term political interests of a few States.

Mr. Agathocleous (Cyprus), Vice-President, took the Chair.

Mr. Fulci (Italy): First I would like to thank the President of the International Criminal Tribunal for the

Former Yugoslavia, Judge Cassese, for the statement he has just delivered, which provides a clear and insightful account of the Tribunal's activities during the past year. We were particularly pleased to hear about the many achievements of the Tribunal. As the President has rightly pointed out, for the first time since Nuremberg and Tokyo, international criminal justice is now being dispensed concretely by the Yugoslav Tribunal. Trials against a number of accused persons are about to finish or will be initiated shortly. Impressive work has been done towards subjecting other individuals to the scrutiny of the Tribunal. Since last year's report, other indictments have been handed down and confirmed by the judges. Several international arrest warrants have been issued. The Appeals Chamber has rendered a judgment that has come to be regarded as a fundamental pronouncement on the current status of international criminal law and humanitarian law. Italy wishes to commend here the skill and dedication of all members of the various organs of the Tribunal, who made it possible to obtain these results.

At the same time, the report underlines the difficulties which lie ahead in the performance of the Tribunal's functions. Although the Dayton Agreement confirmed and reinforced the obligation of States to cooperate fully with the Tribunal, failure to comply with this obligation by some States and Entities in the former Yugoslavia still represents a major obstacle to prosecution and punishment of those responsible for some of the most serious crimes against mankind. In particular, the report raises the issue of the apprehension of persons indicted by the Prosecutor and their consequent surrender, pointing out the enormous gap between the number of indictees — 75 — and the accused already detained — only seven.

As a country that has constantly supported the activities and role of the Tribunal, Italy must reiterate that it is incumbent upon all the parties concerned to cooperate with the Tribunal in the most complete and effective way. This is also a clear priority for the consolidation phase in Bosnia and Herzegovina, as emphasized at the recent Paris meeting of the Steering Board of the Civilian Implementation Conference. There is no justification for not executing the arrest warrants that have been issued, and thus jeopardizing the credibility of the Tribunal.

In this respect, it is also essential that States adopt the legislative, administrative and judicial measures necessary for prompt implementation of the Tribunal's decisions. The report indicates that although a number of additional States have enacted implementing legislation to carry out their responsibilities, the situation on the whole remains unsatisfactory. We hope to see improvement in this area in the near future.

Adequate financial support for the Tribunal remains equally imperative, as does with the cooperation of States in enforcing the sentences of imprisonment imposed by the Tribunal. Italy, among other States, has indicated its willingness to carry out the enforcement of prison sentences pursuant to article 27 of the Tribunal's statute.

As stated in the Tribunal's report, international accountability of individuals for breaching norms of international humanitarian law has become a reality. The establishment by the Security Council of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 has been decisive in producing this important result. The action carried out by the Tribunal for the former Yugoslavia since 1993 stems from the determination of the community of States to avoid impunity for the most heinous crimes of international concern. This action must continue. We are committed to its success.

At the same time, there is a need to complete the institutional framework for prosecution and punishment at the international level of serious violations of international humanitarian law, wherever and by whomever they are committed. Italy has consistently advocated the creation of a permanent international criminal court, and has recently renewed its offer to host a conference in 1998 to adopt the statute for such a court. The experience and achievements of the Yugoslav Tribunal will, of course, be of crucial importance for the establishment of a permanent international criminal court. This is another reason for our full, unconditional and unreserved support for the Tribunal for the former Yugoslavia.

Mr. Sucharipa (Austria): There is no peace without justice, no justice without law. In the case of the former Yugoslavia, this elementary truth has found its reflection in the establishment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, by

Security Council resolution 827 (1993). The Tribunal has been called upon to defend and to act in pursuance of this basic principle of humanity in relation to an area where it is of particular relevance.

Thus, the Tribunal forms part of the efforts of the international community for the restoration and maintenance of international peace and security in the former Yugoslavia. Success or failure of the Tribunal, whose activities are dependent upon cooperation of the States and other political entities concerned, will have direct repercussions on the peace process. The justice which is to be administered through the Tribunal is an essential element of reconciliation and of reestablishment of the rule of law.

The Tribunal is called upon to defend law and justice. Its activities, however, are not related only to the crimes already committed — which the international community is determined to punish — but are also a signal that future crimes will be prosecuted. This preventive effect should not be overlooked.

We have just heard the eloquent statement of Mr. Cassese, his passionate appeal for improved cooperation with the Tribunal by all concerned, and his warning that a lack of such cooperation would undermine the credibility of the Tribunal's activities and, in so doing, would jeopardize the credibility of the overall efforts of the international community. The crimes within the competencies of the Tribunal are of international concern. All States are affected by their commission and they therefore have not only a right, but also a duty to cooperate in the prosecution of such crimes with a view to avoiding impunity for such heinous acts as those that were committed in the former Yugoslavia.

Exactly the same argument prevails as far as the crimes committed in Rwanda are concerned. In both cases, we deeply deplore that the creation of these Tribunals has become necessary. Crimes of the most serious nature and unimaginable cruelty, which place the criminals outside of humanity, have called for determined action by the international community. This action, in both cases — former Yugoslavia and Rwanda — deserves our full support.

We note therefore with satisfaction that the recent report of the Yugoslav Tribunal reveals increasing activity by that organ. As President Cassese told to us this morning, the first trial — the Tadic case — is about to finish. Two others, one of them against four accused, are now in the pre-trial phase. Thus, criminal proceedings against all seven persons in prison have either commenced or have already been held.

This increase of activity also required new legislative activities, as it was necessary to formulate a full and appropriate legal setting for the administration of justice. Problems appeared in the course of practice that were not anticipated at the time of the Tribunal's establishment. In the course of its first case, the Tadic case, fundamental questions were raised and answers were given of particular significance for the whole system: the legality of the establishment of the Tribunal; the priority over national courts; the competence to deal with further cases. These issues can no longer be queried.

The question of the relationship between the Tribunal and the Dayton and Paris Agreements — whether the former would impede the peace process — can with strong conviction be answered in the negative. Irrespective of certain critical remarks, experience has shown that the two instruments coincide and supplement each other: the indictments against persons such as Mladic and Karadzic, superior in the command chain, excluded them from the negotiations. At an earlier occasion this autumn in New York, Judge Goldstone very convincingly made the point that without these indictments Mladic and Karadzic would have participated at Dayton and that, consequently, no positive result in the peace process would have been possible.

On a more general level, indictees find shelter against international jurisdiction only in States or Entities that deny the Tribunal any cooperation. Even if indictees cannot be arrested under such circumstances, they are nevertheless isolated and find no other place that will harbour them, so their powers remain limited. At the same time, this scenario reveals the significance of the special procedures contemplated in rule 61 of the Tribunal's Rules of Procedure and Evidence, to which Judge Cassese referred this morning. Although this rule has to be applied with a certain caution, it nevertheless serves as a useful instrument to strengthen the efficiency of international jurisdiction.

The ultimate and irrevocable aim of the international community will have to remain the prosecution of all war criminals by the Tribunal. In this context, we call upon the Tribunal, and in particular the Prosecutor, to ensure the application of the principle of non-selectivity; to date, well-known criminals such as Mr. Arkwan and Mr. Seselj have not been indicted. That needs to be rectified.

Reconciliation and restructuring of civilian institutions and society can never be achieved without dealing with this dark chapter in terms of justice, regardless of the person who committed or ordered or otherwise participated in these most severe crimes. In the words of Mr. José Ayala Lasso, the United Nations High Commissioner for Human Rights,

> "the obscenity that a person stands a better chance of being tried and judged for killing one human being than for killing 100,000" *(A/51/292, para. 5)*

must not prevail.

The operation of the Tribunal depends on the cooperation of States. That cooperation was ensured by the creation of the Tribunal through a binding resolution of the Security Council under Chapter VII. Not only do obligations under that resolution override obligations under any other treaty, according to Article 103 of the Charter, but States also have to assume State responsibility with all the necessary legal and political consequences if they do not comply with those obligations. We listened this morning with great interest to the announcement made by President Cassese that he intends to seize the Security Council of this issue.

One of the first duties ensuing from that resolution is the enactment of the necessary implementing legislation. In view of the novelty and complexity of the matter, this is not an easy task. Austria, more affected than many other States due to geographical proximity, has enacted the necessary legislation and has even amended constitutional norms of this process.

Austria is, of course, willing to continue its already close cooperation with the Tribunal by providing evidence material and through the surrendering of suspects. Furthermore, we will actively examine additional ways to assist the Tribunal in carrying out its vital functions.

Regrettably, only a few States have until now enacted appropriate legislation. Austria appeals to all States and entities that have not yet done so to enact the necessary legislation and to cooperate fully with the Tribunal. According to the statement by the President of the Tribunal at the Mid-term Conference, held at Florence on 13 and 14 June 1996, and reiterated in more detail today, the only Government in the area with a record of cooperation is that of Bosnia and Herzegovina, whereas the Republika Srpska shows by far the least readiness. The statement made this morning by Mr. Cassese could not have been clearer. He referred to the fact that since the signing of the Agreement in Paris on 14 December 1995, no major breakthrough has occurred. He went on to say:

> "Some parties to the Agreement have simply failed to implement it in a crucial area: the apprehension of persons indicted by the Tribunal and their surrender to The Hague.
>
> "This applies, in particular, to Serbia and Montenegro and to Republika Srpska". *(supra, p. 7)*

That lack of implementation and necessary legislation violates international law and cannot be accepted. We must however find it equally deplorable that Mr. Cassese had to continue his statement this morning with the following comment:

> "It is a matter of regret that the Federation of Bosnia and Herzegovina has so far failed to execute our arrest warrants. Similarly, it must be regretted that Croatia has failed both to exercise its indisputable influence and authority over Bosnian Croats to apprehend and deliver them to the Tribunal and to execute arrest warrants in Croatia itself, notably in the case of two leading figures, Ivica Rajic and Dario Kordic". *(supra, p. 8)*

Mr. Cassese went on to say that the Tribunal was not established to do victor's justice, but to dispense victim's justice. All concerned must reconsider their recalcitrance and cooperate fully with the Tribunal. In this context, it is, of course, relevant to recall that non-cooperation with the Tribunal and the refusal to surrender indictees are in violation of the Dayton Agreement and therefore cannot be tolerated.

Furthermore, there is a clear connection between the continued presence of war criminals in certain areas and the non-return of refugees, as their presence proves the absence of the rule of law and acts as a disincentive for refugees to return to their homes.

The conclusions of the ministerial steering board and the Presidency of Bosnia and Herzegovina, adopted at a recent Paris meeting, established a clear conditionality between the availability of international financial assistance and the degree to which all the authorities of Bosnia and Herzegovina would fully implement the peace agreement, including cooperation with the International

Criminal Tribunal. That conditionality is of greatest importance. Cooperation with the Tribunal must be an essential element of conditionality at all levels.

At this very moment, in other forums, we are negotiating an instrument through which a permanent international criminal court would be established that would make ad hoc tribunals redundant. As can be seen from the activity of the International Criminal Tribunal, these negotiations are a difficult task and a very sensitive issue, since questions of the sovereignty and independence of judicial systems are at stake. These negotiations will undoubtedly be influenced — and this point was already made this morning by the Ambassador of Italy — by the progress of the International Criminal Tribunal. Its failure would entail disastrous consequences for the negotiations on the international criminal court.

With a view to avoiding such failure, all of us have to lend our full support in implementing the relevant Security Council resolutions, as well as the provisions so wisely enshrined in the Dayton/Paris Accord, in support of the difficult tasks of the Tribunal. Given the lack of cooperation of one Entity in particular, Austria would like to see the Implementation Force (IFOR) take advantage of its mandate and effectively assist the Tribunal with regard to executing international arrest warrants.

This consideration is even more relevant since the whereabouts of the indictees are generally well known. Therefore, it will also be crucial not to weaken the mandate of any post-IFOR operation in that respect. On the contrary, my Government considers this task as high priority. The non-arrest of indictees cannot be tolerated. The credibility of the International Criminal Tribunal and of the international community as a whole is at stake.

Let me conclude by once more pledging my country's full support for the activities of the Tribunal under the most able guidance of President Cassese.

Mr. Campbell (Ireland): I wish to thank the President of the International Tribunal, Judge Antonio Cassese, for the comprehensive statement he has given us. My delegation also commends him and his staff for the quality of his third annual report, which the General Assembly has just noted. In both its detail and analysis, it provides us with a full and clear account of the work that the Tribunal has accomplished over the past year. I should like also to pay tribute to the work of the former Prosecutor, Judge Richard Goldstone, and to assure his successor, Judge Louise Arbour, of the support of the Irish Government.

Ireland reiterates its strong and unequivocal support for the work of the Tribunal. Full cooperation with the Tribunal by all parties in an effort to bring war criminals to justice is a fundamental obligation that must be honoured if genuine stability and lasting peace are to be consolidated. Failure to arrest and transfer persons indicted by the Tribunal constitutes a serious violation of these obligations.

Progress in this area is now more important than ever, following the elections in Bosnia and Herzegovina. The ongoing and appalling revelations of evidence of mass executions in Bosnia and Herzegovina and the mass grave sites that are being uncovered fill us with a sense of outrage and disgust. The families of the victims of these appalling crimes and the vast majority of the people of the region look to the Tribunal and to the international community to put an end to the impunity which the perpetrators of these dreadful crimes continue to enjoy. Only when those responsible for the atrocities committed during the war have been brought to justice can the process of reconciliation fully take hold.

The Irish Government is gravely concerned that indicted war-crime suspects continue to remain at liberty. In accordance with Security Council resolution 827 (1993), other resolutions and the Peace Agreement, the parties are required to take all necessary steps to ensure that they comply with orders of the Tribunal. They must therefore cooperate in the immediate execution of all warrants of arrest and the transfer to the Tribunal of all persons indicted in accordance with article 29 of the statute of the Tribunal. Any challenge to the authority of the International Tribunal is unacceptable and, in this context, my delegation refutes all efforts to try on the territory of the former Yugoslavia persons indicted by the Tribunal.

Ireland and its European partners continue to monitor compliance in this area very closely and have agreed that international organizations and agencies that are active on the ground should examine how they can make a more effective contribution to the efforts that the International Tribunal is itself taking in this regard.

Finally, I should like to express my delegation's appreciation to the Government of the Netherlands, which, as host State, has provided continuous financial and technical support to the International Tribunal. Ireland has assisted the work of the Tribunal through voluntary financial contributions and by providing assistance to the Tribunal's investigation teams. We remain committed to

supporting the activities of the Tribunal in the future and to assisting its work in every possible way.

Mr. Hasmy (Malaysia): At the outset, my delegation wishes to express its profound appreciation to the President of the International Tribunal for the former Yugoslavia, Mr. Antonio Cassese, for the comprehensive third annual report of the Tribunal submitted to the Assembly (A/51/292). My delegation also wishes to express its appreciation to the Government of the Netherlands for the cooperation and support it has extended to the Tribunal since its establishment three years ago.

My delegation has carefully studied the report and we are happy to note that the Tribunal has made some progress in carrying out the formidable tasks entrusted to it by the international community to bring to justice the persons responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia. We are gratified to note that, despite the limitations and obstacles, the Tribunal has managed to begin the first trial, while two other trials are being scheduled for this year. At the same time, the Tribunal has also issued 18 public indictments on 75 indictees, of which seven are in detention at The Hague. Notable among those indicted were the Serb political leader Mr. Radovan Karadzic and Serb military leader General Ratko Mladic, both of whom had been twice indicted on charges of committing genocide and crimes against humanity. We consider that the successful implementation of this important task would not only serve the cause of justice but also contribute to the restoration of international peace and security in the Balkan region.

However, my delegation is disturbed by the observations contained in paragraphs 168 and 169 of the report on the varying degrees of cooperation or lack of real cooperation extended to the Tribunal by the concerned States and Entities. While we commend the Republic of Bosnia and Herzegovina as the most cooperative party, we deplore the failure of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Serb Entity to comply with the orders and to execute the warrant of arrests issued by the Tribunal. More disturbing to us is the fact that the two notorious indicted war criminals, Karadzic and Mladic, have not been arrested and handed over to the Tribunal in The Hague, as required by the Dayton Accord.

Their failure, therefore, not only constitutes a blatant violation of the provisions of the relevant Security Council resolutions and their commitments to the Dayton Peace Agreement, but also gross disrespect for international humanitarian law. In this regard, my delegation strongly urges the international community to take appropriate action, including punitive measures, to compel the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Serb Entity to comply with their obligations to the Tribunal. The Security Council, which is responsible for its establishment, should also be more assertive in ensuring that Member States fully comply with their obligations to the Tribunal.

We are pleased to note that a productive working relationship has been established between the Tribunal and the Implementation Force (IFOR), resulting in the enhancement of its principal tasks. However, we regret to note that IFOR has not been very helpful in executing the arrest warrants transmitted to it by the Tribunal, despite all the means at its disposal.

My delegation also concurs with the observation in paragraph 204 of the report on the need for the international community to remain vigilant against a dangerous proposal by the Federal Republic of Yugoslavia (Serbia and Montenegro) and Republika Srpska to usurp the authority of the Tribunal by setting up their own tribunals. We consider that such an action would violate the Tribunal's primacy and infringe both Security Council resolutions and the Dayton Peace Agreement. This must be strongly resisted and prevented.

While we appreciate the important role played by the Tribunal in bringing justice to and thereby contributing to the peace and security of the people in Bosnia and Herzegovina, we should also recognize the need for the Tribunal to be given sufficient financial support to carry out its multifarious functions. We strongly feel that the current financial constraints faced by the Organization should not be allowed to hinder the important work of this Tribunal. It is my delegation's hope that the international community will be more forthcoming in its contributions to finance the activities of the Tribunal, including its exhumations programme, to ensure that justice is done to the people in Bosnia and Herzegovina. Malaysia, for its part, has contributed some $2 million to its funds and will continue to render its modest support to the Tribunal.

In conclusion, my delegation hopes that justice will be served, as we firmly believe that "ethnic cleansing" is a crime against humanity and should not be brushed aside out of political expediency. Those responsible for the horrendous acts undertaken in pursuit of "ethnic cleansing" should not be allowed to go unpunished. The

victims must not be denied justice. The work of the Tribunal deserves the continued and unreserved support of the international community.

Mr. Sacirbey (Bosnia and Herzegovina): Let me first express our appreciation for the commitment and efforts of the entire team comprising the International Criminal Tribunal for the former Yugoslavia. Let us also recall the service performed by the former chief Prosecutor of the Tribunal, Judge Richard Goldstone. We expect the same high level of cooperation with the newly appointed Prosecutor, Louise Arbour, and wish her the best in her efforts.

For Bosnia and Herzegovina, the Tribunal is not just an international institution with only a tangential relevance to our country. The Tribunal, by the terms of the Dayton/Paris Peace Agreement, demands our full cooperation. Furthermore, the new Constitution adopted by our country as a consequence of the Dayton/Paris Peace Agreement also demands full cooperation and establishes the Tribunal as the court of highest jurisdiction addressing violations of international humanitarian law in Bosnia and Herzegovina. Our Parliament has adopted the necessary enabling legislation to assure full compliance of our State and local institutions with the Tribunal.

In a similar sense, the countries that sponsored the Dayton/Paris Peace Agreement, in particular the Contact Group members, have committed themselves to ensuring that the Tribunal's legal authority is fully respected. For that matter, the General Assembly and the Security Council, having given life to the Tribunal, are explicitly and implicitly bound to give it the necessary support. For our part, we have restrained and delegated our sovereignty not because of the international community but because of ourselves. The Tribunal for us is an essential — I repeat, essential — element of justice, reconciliation and a lasting peace. This is not for us an issue of revenge.

With all representatives, I listened intently to the report of the President of the Tribunal, Judge Antonio Cassese, this Florentine citizen of physically slight build, of mild demeanour, of superior intellect and commitment to his duties and of anything but machiavellian manners. What is it that makes some so uncomfortable with his words, his message? Is it that he represents a nagging conscience?

When Bosnians were the victims of "ethnic cleansing", torture, rape and genocidal murder, the most powerful countries of this Organization rejected intervention and instead offered humanitarian relief and the promise of justice as a substitute. They promised that the perpetrators of the worst crimes against international humanitarian law would never be allowed to feel secure and that the victims would receive comfort through the authority of the judicial process backed by the power of the most powerful.

However, now that the war has ended, the indicted and unindicted criminals are free, exercise power and contaminate the peace. And the victims are once again subjected to excuses as to why they do not deserve justice.

While we fully appreciate the commitment and efforts of many — and here, in particular, I wish to mention Ambassador Albright, as well as Ambassador Jean-Bernard Mérimée, the former Permanent Representative of France, and Sir David Hannay, the former Permanent Representative of the United Kingdom, who worked to see the Tribunal established — how can we explain or justify that, while there are almost 60,000 superiorly armed and deployed troops of the North Atlantic Treaty Organization (NATO) Implementation Force (IFOR) on the ground in Bosnia and Herzegovina, not even one of these troops has stumbled upon an indicted war criminal or performed an arrest?

The answer lies in the words of the political and military commanders who have openly stated that apprehending an internationally indicted war criminal is not worth risking the life of one soldier from Nebraska, Lyon or Manchester. If such words were uttered and the same policies followed by these same officials within the borders of their own countries, they would shock public confidence, draw immediate condemnation and shake the very foundation of that society. In our society, where we are recovering from war and trying to restore peace and order, such sentiments of indifference gut the process of reconciliation and peace. What deal, explicit or implicit, has been made with the devil, the indicted war criminals, so that the best equipped soldiers on the ground would avoid confronting the criminals while our society is denied real reconciliation and peace?

While we fully recognize that the primary responsibility for compliance rests with the States and authorities of the former Yugoslavia, it is nonetheless the primary responsibility of all States and international institutions to support the Tribunal. It is part of the international code.

But maybe the words of Judge Cassese do not just represent a nagging conscience. The Tribunal has put forth formal indictments against suspected perpetrators; reconfirmed those indictments by issuing internationally mandatory arrest warrants; and issued reports clearly identifying those countries and State authorities that are refusing to cooperate with the Tribunal.

It is not necessary here once again to repeat the Tribunal's condemnations. The Tribunal clearly names the non-compliant and we have all read the reports and heard Judge Cassese's statement. Nonetheless, the Tribunal's reports and requests for action or even sanctions are routinely ignored by the Security Council and the sponsors and implementers of the Dayton/Paris Peace Agreement. Why? Obviously, some believe that the path to their objective — presumably peace — is based upon political expediency rather than real justice and real reconciliation. Even conditionality is not applied with respect to the non-compliant.

A Tribunal has been established by the authority of this Organization, the United Nations, under the statute of international law, and this Tribunal has been endowed with some of the most committed and finest legal minds, experts on international humanitarian law. However, some apparently believe that we do not deserve the benefits of this Tribunal's higher standards, nor do these committed legal minds deserve the Assembly's unqualified support. Instead, some believe Bosnia and Herzegovina's future is best tailored behind closed doors where justice is evaded and *realpolitik* pursued.

Maybe some do not believe that the horrendous crimes, the violations of international humanitarian law, committed against Bosnians are crimes against all of us. Maybe they believe that the Tribunal is just a minor extension of the political process to be employed when convenient in the judgement of a narrowly focused politician or military strategist. I suspect that the mother of that soldier in Nebraska would better comprehend the equality and sanctity of all human life, the universality of justice and the necessity for consistency before the law.

What message is being sent regarding the future of the Tribunal? What message is being sent through the selective application of international law with respect to the future of an envisioned international criminal court? For that matter, what message is being sent with respect to the future of the United Nations?

Some have suggested that the Tribunal is one-sided and not impartial because it has not indicted the same number of persons from each of the ethnic groups involved in the conflict. First of all, this is a perversion of justice and history. Secondly, this is not an issue of ethnic groups, but individual and State accountability for violations of international humanitarian law. Finally, this suggestion is motivated by the desire to rewrite history and to portray all parties and States as somehow equally culpable in order to set aside issues of justice and responsibility and give confirmation to past policies of inaction. This suggestion is only one more proof of political expediency attempting to enslave justice. The Tribunal has so far firmly avoided politicization, but it is now being undermined by politics.

The Bosnian Government would like once again to make clear its long-standing position, its view that any Bosnian citizen, regardless of ethnicity or religion, who has been victimized deserves justice and the full efforts of our Government to achieve that justice. Likewise, any indicted war criminal, regardless of ethnicity or religion, must be held accountable for his or her actions.

The Government of Bosnia and Herzegovina has delivered every indicted criminal under its control to the Tribunal. Most pointedly, while Bosnian Muslims comprise by far the smallest number of indicted persons, ironically, because of the commitment and efforts of our Government to justice, they comprise the single largest number of defendants currently held by the Tribunal.

Despite this demographic and political irony, the Bosnian Government will continue fully to cooperate with the Tribunal and address justice through our national courts and institutions. This is not by any means easy, but rather painful, as justice has been selectively applied by the most powerful. Now it is up to the Assembly to steer justice to its rightful position in the hierarchy of international priorities and to provide the much needed support for the Tribunal and its officers. Let me finally record, as I conclude, our thanks to the Government of the Netherlands for its comprehensive support for the work of the Tribunal. Let me also note the statement of Ireland on behalf of the European Union and the announced indication of a review of options and greater engagement in ensuring compliance with the Tribunal.

Mr. Biegman (Netherlands): I wish to thank the President of the International Criminal Tribunal for the Former Yugoslavia, Judge Cassese, for his important statement and commend him and the Tribunal as a whole

for the manner in which they are carrying out their daunting task.

Since the establishment of the International Criminal Tribunal three years ago, I do not recall having heard anybody express the expectation that the Tribunal's task would be an easy one. On the contrary, many sceptics have exploited numerous opportunities to try to convince the world that the Yugoslavia Tribunal was created with an impossible mission. As the representative of the host country of the Tribunal, but also on more objective grounds, I do not share this defeatist opinion. Ever since Security Council resolution 827 (1993) was adopted in May 1993, my country has had high expectations of the Tribunal. For that very reason, we were very pleased and honoured to welcome the Tribunal to The Hague and we are still pleased to support it wherever and whenever we can.

That does not take away the fact that the task of the Tribunal is anything but an easy one. It is, in fact, highly complicated. This is because, first of all, any bona fide judicial process is always complex and complicated. In order to uphold full impartiality, fair trial and due process, a large variety of rules and regulations has to be implemented and respected. This requires the highest skills on the part of the judiciary, but also on the part of prosecutors and registrars. The value of these rules and regulations became clear only last month when the defence in the Tadic case managed to disclose a false testimony from a key witness for the prosecution.

This was a setback for the prosecution, but it also demonstrated that defendants before the Court receive a fair and impartial trial. The incident pointed to the indispensable character of proper legal proceedings and of counsel for the accused, as well as to the importance of rules dealing, *inter alia*, with perjury.

For the Preparatory Committee on the Establishment of an International Criminal Court there is much to be learned from these developments, as from many other developments with regard to the Tribunal. In short, the Tribunal is rapidly maturing, which, as we all know, is a process that has its ups and downs.

I have just spoken about some legal aspects of the ongoing process which is the Yugoslavia Tribunal. President Cassese, in his statement, went more deeply into the various obstacles confronting the Tribunal. It is clear that it will be spared nothing that is usual in national criminal courts, including perjury, untraceable suspects, non-cooperative witnesses, language problems and so on.

On top of this, the Tribunal also has political problems to cope with. Lacking its own enforcement powers, the Tribunal is fully dependent on the cooperation of States for the provision of suspects and evidence. Annex I to the third annual report of the Tribunal (A/51/292) contains an impressive list of confirmed indictments. Annex II to the same report contains an equally impressive list of failures by States and entities once forming part of the Socialist Federal Republic of Yugoslavia to execute arrest warrants. This explains why, although the increase in cell occupation since last year has been some 600 per cent, only a small number of indicted persons have so far been detained. For some of these detentions thanks are due to States not forming part of the former Yugoslavia.

My disappointment in this respect relates also to the fact that, notwithstanding the Dayton Agreement, it has not been possible for the international community to apprehend the primary suspects in crimes in the former Yugoslavia in cases of refusal on the part of former Yugoslav States or entities to do so. I do not share the view that the Tribunal is bound to fail if it cannot try Mr. Karadzić and General Mladić. It is, however, obvious that their prosecution is priority number one for the Tribunal, since this would confirm for the Tribunal the status which it so much deserves. It would mean that genocide, crimes against humanity and war crimes will not be left unpunished. Maybe other war criminals will have to be apprehended before the main indictees are brought to trial. In any case, it is high time for serious action with regard to arrests.

I want to reiterate my country's firm commitment to supporting the Tribunal and to call on all States and entities to do their duty to empower the Tribunal to fulfil its highly complex task. No country or entity in this world has a valid excuse, legal or otherwise, for harbouring indicted war criminals.

Mr. Kharrazi (Islamic Republic of Iran): I wish to begin by expressing the appreciation of my delegation to Judge Antonio Cassese, the President of the International Tribunal, for presenting the third annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, contained in document A/51/292.

The sixty-page report before the General Assembly describes various activities carried out by the Tribunal within a time span of 12 months. The Members of the Organization, who are anxiously looking forward to seeing the offenders of the most heinous crimes brought to justice, attach great importance to this report.

The appalling atrocities committed in the territory of the former Yugoslavia still continue to disturb the conscience of the international community. The commencement of exhumations of mass graves in June 1996 unveiled some horrifying aspects of the monstrous crimes committed in the Balkans. The beginning of trials in The Hague and the appearance of dozens of witnesses before the Tribunal's hearings also demonstrate the broad range and gravity of offenses perpetrated in that region.

The wide scope of outrageous crimes and the enormity of breaches of norms of international humanitarian law made it imperative to found the International Tribunal as an exceptional and unique legal forum beyond the traditional approach of international law, which requires the establishment of such a body by treaty.

The unique character of the Tribunal, and indeed the hope expressed in Security Council resolution 827 (1993) that the Tribunal

> "will contribute to ensuring that such violations are halted and effectively redressed", *(resolution 827 (1993), seventh preambular paragraph)*

raised high expectations of immediate action, irrespective of the fact that such judicial institutions are normally established after the event, when hostilities have come to an end.

Undoubtedly, the success of the Tribunal in bringing to justice the persons responsible for serious violations of international humanitarian law would help to heal the wounds caused by the inhumane treatment directed against Bosnian Muslims by the Serbs, which included genocide, ethnic cleansing, massive rapes of women, torture and the forcible displacement of civilians. It would also send a message to the victims of such criminal acts — whose dimensions and ramifications are beyond any explanation — that humanity will not turn its back on them and that the perpetrators will not be left in impunity. The effective functioning of the Tribunal would certainly contribute to a greater degree to the restoration of peace and security in the region.

We note from the report that in the third year of its activities the Tribunal has become fully operational and has taken positive steps forward. The report indicates that the Tribunal has commenced its first trial, while two other cases before it are in the pre-trial phase, and a fourth case is at the sentencing stage. It further explains that 10 public indictments against a total of 35 individuals have been issued.

We commend the efforts of the President, judges and other members of the Tribunal for their tireless efforts to uphold justice. In the meantime, considering the wide scope of atrocities committed in Balkans, it is quite obvious that the trial of a few criminals and the indictment of some others are far from the realization of the objectives of the Tribunal. A historic responsibility at a very critical juncture is bestowed upon the Tribunal. This international legal body, which enjoys the support of the international community, should redouble its efforts, fulfil effectively and expeditiously the responsibility entrusted to it by the Security Council resolutions, and ensure that under no circumstances will the imperative of justice be overlooked.

The report before the Assembly illustrates the praiseworthy support and cooperation rendered by various States and international organizations for the better functioning of the Tribunal. On the other hand, the report indicates in paragraph 204 that some of the States or entities of the former Yugoslavia, in particular Serbia and Montenegro and the so-called Republika Srpska, still refuse to cooperate fully with the Tribunal and to arrest and transfer the major indictees to meet justice. Such intractable recalcitrance cannot and should not be tolerated by the international community. We agree with the conclusion of the report in paragraph 205 that the persistent illegal refusal of certain States to surrender indictees for trial could certainly defeat the aim of the Security Council and may lead to recurrence of the distressing animosities of past years.

It should be emphasized that the success of the Tribunal in achieving its objectives is certainly tantamount to the victory of humanity in its fight against brutality. Thus, we endorse the suggestion made by the Tribunal that

> "for the sake of international peace and justice such illegal conduct should not continue to be tolerated and appropriate action should be taken to compel States reneging on their international obligations to support the Tribunal". *(A/51/292, para. 205)*

To this end, it is indispensable that all nations put in place all the measures required to enable this Tribunal to fulfil its mission. It is also essential that the United Nations, as the founder of the Tribunal, and the Security Council in particular, adopt effective measures to persuade those States that have yet to obey the orders of the Tribunal to do so, and ensure that the demands of international justice prevail over the interests of a few States. Let us ensure, by our actions and not by our words, that culprits guilty of egregious conduct will not escape with impunity.

Mr. Reyn (Belgium) (*interpretation from French*): At the outset, my delegation wishes to express its appreciation to the President of the International Criminal Tribunal for the Former Yugoslavia, Mr. Antonio Cassese, for the presentation of its third annual report, which gives an exhaustive and clear overview of the work of the Tribunal from 31 July 1995 to 31 July 1996. The quality of the report attests to the seriousness with which the President, the Prosecutor and the staff are carrying out their difficult task. My delegation would also like to express its appreciation for the very substantial contribution that the Netherlands, as host country, is making to the activities of the Tribunal.

In establishing the ad hoc tribunals, the international community has equipped itself with mechanisms for rendering justice that can put an end to the impunity from which, until now, the perpetrators of serious crimes against international law have all too frequently benefited. Despite a broadly positive record, and bearing in mind the difficulties that the Tribunal continues to face, one cannot help but feel that there is still progress to be made. The lack of cooperation shown by the parties, particularly in arresting indictees, contrary to the provisions of the Dayton Accord, continues to be both disappointing and disturbing. The report of the President is most eloquent on this point, referring *inter alia* to the risk of undermining the credibility and authority of the Tribunal implied by such forms of behaviour.

Another potential danger that risks undermining the authority of the Tribunal is the proposal by certain parties to try those persons already accused by the Tribunal on the territory of the former Yugoslavia itself. My delegation believes that the implementation of such proposals might lead to impunity for some of the accused. In this context, the report of the Tribunal rightfully recalls the Leipzig trials of 1920-1922, which remain in humanity's collective memory as a sombre example of impunity for perpetrators of heinous crimes.

Despite these difficulties, or precisely because of these difficulties, my delegation wishes to voice its steadfast support of the work of the Tribunal. Belgium believes that this court is a moral beacon for the international community, which must serve to guide it in the quest for a juster world.

Establishing the true facts on violations of fundamental rights in the former Yugoslavia is progressing with investigations and enquiries by the Tribunal on the ground. Hence, no one can claim in the future to have been unaware of the events in the former Yugoslavia, and no one can remain silent on the heinous crimes perpetrated in that country. The role of the Tribunal in this regard remains crucial, and would already be sufficient in itself for my delegation to support its efforts.

However, the importance of the work of the Tribunal does not end there. Some of the tangible achievements could be highlighted here to better assess the progress made: individual non-collective indictments for crimes committed in the former Yugoslavia; restrictions on the movement of persons indicted by the Tribunal, even though they have not yet been arrested; reminders of the importance of respect for and application of international humanitarian law; contributions to the development of international criminal law; and positive effects on the establishment of an ad hoc Tribunal for Rwanda.

Belgium believes that the achievements of the Tribunal should be developed and consolidated in the years to come. This effort is particularly justified at a time when the international community is preparing for the establishment of a permanent international criminal court. It would indeed be regrettable for the ad hoc Tribunal for Yugoslavia to lose its impetus at this particular time. In this spirit, Belgium urges all parties to collaborate fully with the Tribunal and to adopt the necessary legislation in this regard.

In this respect, Belgium has, in accordance with Security Council resolution 827 (1993) of 25 May 1993, adopted domestic legislation enabling it to ensure the necessary full cooperation with the Tribunal. My country is also ready to make a contribution to the witness-protection programme.

The future international criminal court must draw on the experience and judicial precedents of the ad hoc tribunals. The establishment of a permanent court will provide the international community with a tool to avoid

and prevent crimes that are shocking to the conscience of humankind. The work done by the ad hoc tribunals will have made a useful contribution to the attainment of the objective that we have sought for many years.

Mr. Çelem (Turkey): We were pleased to see that positive developments took place last year in the territory of the former Yugoslavia. The Dayton Agreement was signed and a new political era began in that turbulent region. But the way ahead is still fraught with dangers and there may still be setbacks on the difficult road to a just and viable peace and political stability.

In this context, the successful functioning of the International Criminal Tribunal is of vital importance to the full implementation of the Dayton Agreement, as well as to the establishment of real peace in Bosnia and Herzegovina. Conversely, the Dayton Agreement could have a positive effect on the operation of the Tribunal. Under the terms of the Agreement, the Office of the Prosecutor has acquired the ability to function effectively in many areas, such as the transfer of individuals and the securing of mass-grave sites.

The implementation of the Dayton Agreement is an ongoing process. The prerequisite for the implementation of the Dayton Agreement, as with any international agreement, is that all parties must comply with all its provisions. The obligation to cooperate with the Tribunal is set down in the Dayton Agreement. The refusal of the Republika Srpska and the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal, after having formally recognized and undertaken to cooperate with it, constitutes a violation of the Agreement. This point has been duly reflected in the report submitted by the President of the Tribunal, Judge Antonio Cassese, and in his address to the General Assembly this morning.

The normalization of relations in the territory of the former Yugoslavia and the attainment of the goal of unification in the Republic of Bosnia and Herzegovina will require a new atmosphere of trust and security to be built between the parties. Trust and security can only be achieved by respecting the rule of law. At this critical stage, it is imperative that Republika Srpska and the Federal Republic of Yugoslavia (Serbia and Montenegro) carry out the arrest warrants of the Tribunal and fully cooperate with it. In this context, as the President of the Tribunal emphasized in his statement, the Tribunal tries only individuals. It does not try peoples, nations or States and by definition is impartial and unbiased. There is, therefore, an obligation for all States to cooperate fully with the Tribunal. The unnecessary sensitivity shown by some States should never be used as an excuse for not cooperating with the Tribunal.

We have studied the third annual report of the Tribunal submitted by its President and listened with great interest to his statement. Most of our concerns are reflected in the report and the statement. We appreciate the work of the Tribunal. Since the last annual report, 10 indictments have been confirmed against 35 individuals. It is indicated in the report that the Appeals Chamber of the Tribunal sat for the first time and rendered a judgement on an appeal in which the defence counsel argued that the Tribunal was unlawfully established and did not have primacy over the competent domestic courts. The Appeals Chamber dismissed these grounds of appeal. We view this as a significant decision. The dismissal decision of the Appeals Chamber firmly establishes the authority of the Tribunal and shows that no legal assertion can be put forward to circumvent or disregard the Tribunal.

In conclusion, I should like to state, once again, our firm conviction that, if peace is to triumph, justice must prevail.

Mr. Hormel (United States of America): The United States welcomes the address made this morning by President Antonio Cassese of the International Criminal Tribunal for the former Yugoslavia. Under his leadership, the Tribunal has undertaken the extraordinary challenge of rendering justice against those individuals responsible for serious violations of international humanitarian law in the former Yugoslavia. In its fourth year of operation, the Tribunal has achieved a historic beginning in a process that must be pursued diligently and with the full support of the international community in the years ahead.

The Prosecutor of the Tribunal, Mrs. Louise Arbour, has approached her new job with the expertise, commitment and energy that reflect the tremendous potential of the Tribunal to uphold the rule of law. We must ensure that such potential is fully realized. We are gratified that President Cassese reviewed several problems and criticisms of the Tribunal in his address. The United States shares his deep concern about the failure of States to cooperate fully with the Tribunal. The victims of the atrocities in the former Yugoslavia, as well as the international community, have waited too long for indicted individuals to be arrested and transferred to The Hague to stand trial.

One year ago this week, the General Framework Agreement for Peace in Bosnia and Herzegovina was signed in Dayton, Ohio, by the representatives of the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia (Serbia and Montenegro). supplemental agreements were signed by the Federation and by Republika Srpska. We have witnessed significant achievements by all parties under the Dayton Peace Accord. But civilian implementation of the Dayton Accord has been disappointing in many respects, particularly with respect to war crimes.

The United States has maintained consistent pressure on States and Entities in the region to perform the legal obligations to which they committed themselves in the Dayton Accord and which they have reaffirmed on several occasions since then. Only last week in Paris, the presidency of Bosnia and Herzegovina agreed that the guiding principle of achieving peace among their citizens is:

> "full cooperation with the International Criminal Tribunal, in accordance with the Peace Agreement",

and that

> "indicted persons must be surrendered to the Tribunal without delay."

Secretary of State Warren Christopher emphasized in Paris that cooperation with the Tribunal is an essential condition for each party seeking to rejoin the international community. We encourage all Member States to place full cooperation with the Tribunal in the forefront of their own policies and in their relations with the Dayton parties. We also reiterate our appeal to the international community to provide sufficient financial and in-kind assistance to the work of the Tribunal.

One of the reasons the United States has so strongly supported the International Criminal Tribunal for the Former Yugoslavia is because of the critical precedent it represents for the establishment of a permanent international criminal court. If the Tribunal fails to obtain the full cooperation that the Dayton parties and Member States are obligated to provide, then prospects for an effective permanent court may diminish. Therefore, more is at stake in the challenges presented by President Cassese this morning than the accounting for war crimes in the former Yugoslavia.

Finally, we wish to extend our appreciation to President Cassese for his leadership of the Tribunal since 1993. His pioneering role under difficult circumstances merits our admiration and congratulations.

Mr. Henze (Germany): Allow me to convey my deep appreciation of the report of the International Criminal Tribunal for the Former Yugoslavia and its presentation by the Tribunal's President. Given my Government's deep respect for the independence of the International Criminal Tribunal, I shall of course refrain from commenting on the Tribunal's work. On that, the President of the Tribunal has given us a comprehensive and very clear account from the point of view of the Tribunal's judges. I shall instead address the obligation of States to cooperate with the Tribunal.

Bearing in mind the task that was assigned to the Tribunal by Security Council resolution 827 (1993), Germany would like to recall the moral and legal footing on which the International Criminal Tribunal for the Former Yugoslavia stands: those who were involved in acts of genocide, war crimes or crimes against humanity must be held individually accountable. Here, the rule of law, as well as the maintenance of civil society and the reconstruction of war-torn countries, is the issue. Lasting peace and reconciliation in the Balkans can only be achieved when war criminals have been brought to justice.

As my Minister for Foreign Affairs pointed out on his visit to the Tribunal in The Hague on 31 October, the Tribunal depends very much on the cooperation of States in the fulfilment of its tasks. The legal obligation to cooperate with the Tribunal is laid down in article 29 of the Tribunal's statute. The willingness of States to surrender or transfer indictees against whom international warrants of arrest have been issued is vital to the continued successful work of the Tribunal. The German Government believes that the international community owes it to the Tribunal to ensure that article 29 of the statute does not become a dead letter.

It is not only the credibility of the Tribunal itself that is in danger. Also at stake is the credibility of the United Nations, which established the Tribunal through its Security Council and has reaffirmed in a number of resolutions the obligations of the parties to the Dayton Agreement to cooperate fully with it. Ultimately at stake is the moral responsibility of the international community to ensure that those who committed atrocities will not go unpunished and that their victims will not be denied justice.

Germany therefore calls on all States to lend their active support to the Tribunal. As for my own Government, I wish to avail myself of this opportunity to express once again Germany's unequivocal commitment to the Tribunal and its purposes: that justice be done and executed.

Mr. Maleski (The former Yugoslav Republic of Macedonia): The century that is coming to a close has sometimes been called the most violent century in human history, a century of massacres and wars. Facing the future, we are aware that we will not eliminate war, but we can make the twenty-first century less violent.

The Balkans are a region where violations of international law have a historical continuity. One of the reasons is that violators who have repeatedly committed them have never been held accountable. The shifting tides of power relations in and among States, and the breakdown of state systems, have produced leaders who have plunged the peoples of the region into bloody ethnic wars several times in the course of the twentieth century. The object of these wars, which were fought not only by armies but also by the nations themselves, has been the extermination of alien populations. Fueled by ethnic hatred disguised in different ideologies, the policy of aggressive nationalism has devastated the region over and over again.

However, we must not exaggerate the power of this historical continuity. For surely this century is also marked by the advance of justice and democracy. And surely, the long periods of peaceful life of different ethnic and religious groups have been far longer than the short outbursts of violence. One of the ways to put an end to these outbursts, which have repeatedly thrown the region into misery and suffering, is to develop legal codes of behaviour and institutions which see to it that justice is done. For, so long as there is no justice, there will be no peace in the Balkans.The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is such an institution.

The work of the Tribunal is very important for maintaining peace in the Balkans. The way we dealt with the atrocities committed between different ethnic groups in the past was with amnesia. But the past has kept coming back to haunt us. This is why this time we must, with the help of the Tribunal, prosecute the violators of humanitarian law, thus promoting reconciliation between peoples of different ethnic origin. The lesson that has to be learned is that even in wars there are rules of behaviour, and that if the national state system is unwilling or incapable of dealing with the violators of international law, the international community will hold them responsible. Thus, political leaders who are ready to push their peoples into inter-ethnic violence, without giving a second thought to the consequences, will be forced to think twice.

We are all aware of the difficulties facing the Tribunal. As a result of lack of cooperation by the State authorities, only seven out of 75 indicted persons have been brought to court. The court also has financial problems, even though one day of the Implementation Force (IFOR) costs more than the Tribunal spends in one year.

We are aware of the impediments to its effectiveness arising from the lack of enforcement mechanisms such as an international police force. We are also aware of the fact that Governments are very jealous of their sovereignty. But it is precisely because of these obstacles that the Tribunal is so important. In a system of national States led by individuals with different levels of knowledge, morality and sense of political responsibility, the Tribunal's main task is to demonstrate through the United Nations that there is such a thing as common humanity: that those who do not abide by the rules of international humanitarian law, who shell cities and murder innocent civilians, who commit war crimes such as rape and torture, will be held accountable even if domestic jurisdiction is not willing to prosecute.

The work of the Tribunal is the first act of reconciliation in the Balkans, through which we should acknowledge the suffering of the victims by punishing the perpetrators. Only then can a process of healing begin. Justice must be done, for the sake of the victims and for the future of our children.

Mr. Türk (Slovenia): Slovenia wishes to join the preceding speakers who expressed their appreciation of the third annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. The report submitted this year for the consideration of the General Assembly demonstrates that the Tribunal has become fully operational and that its work justifies the high expectations that characterized its creation. The Tribunal is now entering a new phase of its evolution, and full international support for its mission and its work is necessary.

The principle of the independence of the judiciary is among the sacrosanct general principles of law. It governs the status and the activity of all courts of law, including the Tribunal which is reporting to the General Assembly today. Since its creation, the Tribunal has scrupulously observed the principle of the independence of the judiciary, while actively pursuing the objective of making the Tribunal an effective instrument of international justice. Today everybody agrees that the Tribunal has succeeded. We commend the Tribunal and its President, Judge Antonio Cassese, for this achievement.

At the same time, the principle of the independence of the judiciary imposes certain limitations on the General Assembly in its consideration of the Tribunal's report. The General Assembly and United Nations Member States are gratified by the exhaustive character of the report and by the wealth of information it provides. On the other hand, it would not be appropriate for the General Assembly to comment on all aspects of the report. Our remarks should therefore be limited to those aspects which relate to the necessary support for and cooperation with the Tribunal, while fully preserving the Tribunal's independence.

War crimes committed during the armed conflicts in Croatia and Bosnia and Herzegovina shocked the conscience of mankind. That is why the Security Council, later supported by the General Assembly, decided to establish an effective international judicial organ to prosecute persons responsible for serious violations of international humanitarian law. This was a historic decision in spite of widespread scepticism at the time and despite the fact that it was expected by some that the Tribunal would prosecute only minor war criminals.

The Tribunal then established its normative and logistical infrastructure and, after less than two years, started its judicial action. In that context, the Tribunal and its Prosecutor have proved to be helpful to the cause of peace in a most practical way. The indictments issued in 1995 helped to identify adequate participants in the peace negotiations and thus to the process leading to the Dayton Peace Agreement. This and other instances proved that there is no contradiction between justice and peace. Quite the contrary, the responsible pursuit of justice helped the cause of peace.

The implementation of the Dayton/Paris Peace Agreement enabled the Office of the Prosecutor to carry out investigations in areas affected by the war which had earlier been inaccessible. Implementation of the Peace Agreement has thus contributed to the pursuit of justice.

Today it is possible to claim that the Tribunal has already changed perceptions of the relationship between justice and peace. Peace with justice is a realistic option and one which ought to be pursued globally. The current discussion on the establishment of an international criminal court with general jurisdiction owes much of its viability and promising character to the activity of the Tribunal which is reporting to the General Assembly today. It is likely that its future success will have an important bearing on efforts to establish an international criminal court with general jurisdiction.

The report of the Tribunal notes several welcome developments. The judicial action of the Tribunal and the activity of the Office of the Prosecutor demonstrate the importance of the tasks already undertaken by the Tribunal. The paragraphs on the Registry show a wide variety of activities. We are impressed by the care given to the support and protection of witnesses, and we welcome the cooperation of the Victims and Witnesses Unit with non-governmental organizations. We also welcome certain improvements in the financing of the Tribunal. The developments referred to in paragraphs 127 to 132 of the report are important and demonstrate the support of the General Assembly and of United Nations Member States for the work of the Tribunal. This support ought to continue and should be strengthened.

Finally, we find it important that the number of States which have adopted implementing legislation to strengthen cooperation with the Tribunal is growing. As reported in paragraph 184, Slovenia is among those members of the United Nations which are preparing such implementing legislation.

In several parts of the report, the Tribunal observed that its success still depends on the cooperation of those successor States of former Yugoslavia in which the persons responsible for serious violations of humanitarian law continue to reside. As explained in paragraphs 167 to 170, the degree of cooperation of those States and Entities continues to vary very considerably. It is encouraging that the Republic of Bosnia and Herzegovina has been very cooperative. It is, however, discouraging that the entity of Republika Srpska and the Federal Republic of Yugoslavia (Serbia and Montenegro) remain on the other side of the spectrum, and in particular that the two main indictees, Radovan Karadzic and Ratko Mladic, who have been indicted, *inter alia*, for genocide, have not been arrested and continue to exert influence in public life. This situation should not be allowed to continue.

It is important that at a meeting between the ministerial Steering Board and the Presidency of Bosnia and Herzegovina held at Paris on 14 November 1996, an agreement was reached to the effect that cooperation with the Tribunal constitutes one of the conditions for international financial assistance in the area. Moreover, it was also agreed that the Security Council should consider the imposition of necessary measures against any party that significantly fails to meet its obligations under the Peace Agreement, of which cooperation with the Tribunal is an important part.

We support this approach, and we believe that it should be effectively pursued. The Security Council should not shy away from its responsibility to take the measures necessary to ensure compliance with its decisions. It seems necessary to recall that Security Council resolution 1031 (1995), which continue to be applicable, called on all States to cooperate with the Tribunal and gave the necessary authority to the peace implementation force to use the means at its disposal to ensure compliance with the orders of the Tribunal. That compliance must include the arrest of the indicted individuals and their transfer to the Tribunal. The need to implement that aspect of the Peace Agreement is becoming ever more urgent. We would like to join all those who are encouraging the efforts for the full implementation of the relevant Security Council resolutions and for an effective pursuit of justice.

The experience of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 has reconfirmed the importance of the link between peace and justice. Peace and justice are mutually supportive and should be pursued together. However, the success of that pursuit depends on the effectiveness of international cooperation. We hope that the present debate will make an important contribution to such cooperation.

Programme of work

The President in the Chair.

The President: I should like to inform members that agenda item 159, entitled "Elimination of coercive economic measures as a means of political and economic compulsion", which was originally scheduled as the third item for this morning, is postponed to a later date to be announced.

I should also like to inform delegates that the programme of work for the remainder of November and for the month of December has been issued this morning as document A/INF/51/3/Rev.1/Add.2.

The list of speakers for each of the items listed in document A/INF/51/3/Rev.1/Add.2 is now open. I will announce the dates for the consideration of other agenda items and keep the Assembly informed of any additions or changes.

The meeting rose at 1 p.m.